

NCUA New Dodd-Frank Remittances and Mortgage Lending Rules Webinar

Part 1, November 18, 2013

Questions and Answers

Topics covered:

Regulation Z – Mortgage Lending Rules

Regulation X – Mortgage Servicing Rules

Regulation B – Appraisals

Regulation E – Remittance Transfers

Note: Unless otherwise specified, sections references are to Title 12 of the Code of Federal Regulations (“12 C.F.R. § _____”).

Regulation Z – Mortgage Lending Rules

Q1: If we operate as a correspondent, are our loans combined with the loans of another company to determine whether we are a “small creditor”?

A: Possibly. The small creditor exemption counts the combined number of loans originated by a creditor and its affiliates, if any, regardless of what happens to them subsequently.

1026.35(b)(2)(iii)(B). If the other company is an affiliate, all of its loan originations are counted toward the 500 transaction per year cap for determining small creditor status. “Affiliate” means any company that controls, is controlled by or is under common control with another company. 12 U.S.C. 1841(k). At least 25% ownership by a credit union of a the other company makes the other company an affiliate, but affiliate status can also depend on other factors, such as ability to control operations, establishing policy and procedures and overlapping management.

Q2: Do the loans on which we act as a broker count towards the 500-loan threshold?

A: You count the loans originated by you and your affiliates. 1026.35(b)(2)(iii)(B).

Q3: Is it correct credit unions can be exempt from the escrow requirements for higher-priced mortgage loans and can make QM balloon payment loans if they have at least 50% of their loans in rural or underserved counties AND service less than 500 per year AND have less than \$2B in assets?

A: This is partially correct. To be exempt from the escrow requirements the credit union also must not regularly establish escrow accounts. Servicing rural or underserved counties is not a requirement to originate small creditor QMs or be a small creditor for QM balloon-payment loans through January 10, 2016. 1026.35(b)(2)(iii)(B), 1026.43(e)(5), 1026.43(e)(6)(i) and (ii), and 1026.43(f).

Q4: Is a small creditor defined under the HOEPA as one that originates less than 500 first lien mortgages and has less than 2 billion in assets?

A: No. The small creditor exception does not apply to HOEPA, only to higher-priced loans. In addition, unlike for certain balloon loans and small creditor QMs, to be exempt from the escrow requirements for higher-priced mortgage loans at least 50% of the lender's loans must be in rural or underserved counties. 1026.35(b)(2)(iii).

Q5: If I am considered a small creditor (<5000 mortgages), am I exempt from the escrow requirements as well as the periodic statement requirement?

A: The small servicer exemption applies to the periodic statement requirement. 1026.41(e)(4). A credit union must be a small creditor to be exempt from the escrow requirements for higher-priced mortgages. The credit union must have less than \$2.028 billion in assets, it and its affiliates must have originated 500 or fewer loans in the previous calendar year, more than 50% of the loans must be in rural or underserved areas and it cannot regularly escrow for its loans. 1026.35(b)(2)(iii).

Q6: Does the TILA escrow rule not apply to credit unions with less than \$2B in assets or originating less than 500 1st lien mortgages in the prior year?

A: That is partially correct. In addition, more than 50% of the credit union's covered transactions must be in rural or underserved counties, and the credit union must not require escrows in most of its other mortgage loans. For 2014, the asset cap is \$2.028 billion. 1026.35(b)(2)(iii)(A)-(D).

Q7: We have an outside servicer for most of our mortgage loans and some are serviced on the core system. Do we add both outside serviced loans plus in-house serviced loans together to get the total of over 5000?

A: For purposes of the small servicer exception to the periodic statement requirements of 1026.41, a credit union must add the loans serviced by the outside servicer only if it is an affiliate and the credit union or servicer are the creditor or assignee of all loans. A CUSO may be an affiliate. See the Answer to Question 1, above, for the definition of "affiliate."

Q8: To be a small servicer or creditor, does the credit union need to hit all exemption points?

A: To qualify as a small servicer the credit union and its affiliates must service no more than 5,000 loans annually, for which the credit union and its affiliates are the creditor or assignee. 1026.41(e)(4)(i). A Housing Finance Agency, as defined in 24 C.F.R. 226.5 also qualifies as a small servicer. 1026.41(e)(4)(ii). A credit union is a small creditor for purposes of extending certain temporary balloon-payment qualified mortgages if the credit union has less than \$2.028 billion in assets and it and its affiliates originated 500 or fewer loans in the previous calendar year. See 1026.43(e)(6)(i)(B) and 1026.35(b)(2)(iii)(B) and (C). For other balloon payment qualified mortgages, more than 50% of the loans must be in rural or underserved areas. See 1026.43(f)(1)(vi) and 1026.35(b)(2)(iii)(A), (B), and (C).

Q9: Are small creditors exempt from the requirements of CFPB Bulletin 2013-12?

A: Yes as to some requirements, but not all. For more specific information, you should refer to CFPB's "2013 Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z) Mortgage Servicing Final Rules, Small Entity Compliance Guide," dated Nov. 27, 2013. It is available on CFPB website at

http://files.consumerfinance.gov/f/201311_cfpb_servicing-implementation-guide.pdf.

Q10: Does the need to have an escrow carry over to a mortgage on a residential property where the borrower uses the property as a rental, rather than as a residence?

A: The requirement does not apply to a property purchased for other than the borrower's personal, family or household purposes. 15 U.S.C. 1603(a)(1), (3); 1026.35(b)(1).

Q11: Am I correct in stating that if you do not write Higher-Priced Mortgage Loans, you do not have to escrow?

A: Yes, per 1026.35(b)(1).

Q12: Can a small servicer be exempt from the Higher-Priced Mortgage Loans escrow requirement if it regularly escrows?

A: Generally, no. If the lender maintains escrow accounts for its other borrowers, it must escrow; however, if the other loans for which the creditor maintains escrows are only for higher-priced loans made between 04/01/2010 and 01/01/2014, or as an accommodation for a distressed consumer, escrow is not required. 1026.35(b)(2)(iii). But, if a small lender has a commitment at consummation to sell or assign the loan to a non-small lender, the originating lender must establish an escrow account. 1026.35(b)(2)(v).

Q13: Under the new TILA Escrow rule, is a new appraisal required to have the escrow account removed? Or, is the original appraisal sufficient to determine the LTV threshold?

A: The LTV determination is made by comparing the principal balance still owed to the value of the property at the time of purchase, so no additional appraisal is required. 1026.35(b)(3)(ii)(A).

Q14: Will the APOR escrow rule ever apply to second position or subordinated lien closed end loans?

A: The regulation applies only to transactions resulting in a first lien on the consumer's principal dwelling. 1026.35(b)(1).

Q15: Do loans made under the QM-Balloon mortgage subset qualify for the exemption from the HPML Appraisal Rule?

A: Yes. 1026.35(c)(2)(i).

Q16: Is there a small creditor exemption to the Higher-Priced Mortgage appraisal rule?

A: No. Small creditors are subject to the appraisal notice and provision requirements of Regulation B. 1002.14. Also, there is no small creditor exemption to the higher priced mortgage loan appraisal requirements of Regulation Z. 1026.35(c)(2).

Q17: What is the credit union required to do with the second appraisal that we pay for in terms of the loan decision? What if there is a substantial difference in appraised values?

A: Regulation Z and the Official Interpretations of Regulation Z describe the purpose of obtaining a second appraisal. 1026.35(c)(4)(iv) and Official Interpretation 1026.35(c)(4)(i)-(vii). Although Regulation Z does not specifically address how to reconcile differences in the two appraisals, one must address the reasons for the price increase. CFPB explains this ensures the creditor is presented with information focused specifically on factors that reasonably increase

collateral value in a relatively short period, such as market changes and property improvements. It also serves as a backstop for consumers against fraud in flipped transactions. 78 Fed. Reg. 10368, 10396 (Feb. 13, 2013).

Q18: Does the appraisal disclosure apply to open end home equity loans?

A: Although the Regulation Z appraisal rules apply only to closed-end mortgages, Regulation B requires a creditor to provide an applicant with a notice of the right to receive a copy of all written appraisals developed in connection with an application for closed-end or open-end credit secured by a first lien on a dwelling, and to provide a copy of each such appraisal or other written valuation. 1002.14. So, even if the transaction is for a Qualified Mortgage, a credit union must comply with the appraisals requirements under Regulation B.

Q19: One exemption for the Higher-Priced Mortgage Loans Appraisal Rule is for Qualified Mortgages. Does this exemption apply to small creditors?

A: Yes. Per 1026.35(c)(2)(i), appraisals are not required for qualified mortgages as defined in 1026.43(e), which include small creditor QMs.

Q20: Do interest rate adjustment notices apply to HELOCs?

A: The payment adjustment notices in 1026.20 do not apply to HELOCs; however, a creditor must provide periodic statements that comply with 1026.7(a) and 1026.40.

Q21: We have some old ARMS that were based on variable rates but FIXED payments. The rate can adjust, but the payment cannot. These ARMS are based on a Quarterly LIBOR and the rate could be adjusted QUARTERLY. Must we send the early ARM disclosure?

A: No. The disclosure is required only where the rate adjustment is accompanied by a payment change. 1026.20(c).

Q22: How will credit unions provide accurate Interest Rate Adjustment Notices for an initial adjustment notice 210-240 days before the first payment on an initial rate adjustment, as it will not necessarily know what the rate will be?

A: The credit union can use an estimate, per the provisions of 1026.20(d)(2).

Q23: Are the ARM Disclosures required for open end variable rate loans?

A: No, only for closed-end transactions secured by the borrower's principal dwelling. 1026.20(c)(1)(i).

Q24: In reference to the ARM adjustment notices, is the "initial" rate notice sent between 210 and 240 days before the first payment at the new rate sent only on the "first" time of adjustment and not every year as the 20(c) notice?

A: Correct. The "initial" rate adjustment is the first adjustment for a loan. 1026.20(d). That notice can only be sent once. The credit union must send the "20(c) notice" for all subsequent rate changes resulting in a payment change. 1026.20(c) contains requirements for timing and content of those subsequent notices.

Q25: Was the restriction of a 4% late fee in the mortgage regulations approved or has this restriction been removed?

A: It is in effect for high-cost mortgages. 1026.34(a)(8)(i).

Q26: As to prompt crediting of payments, if the lobby is open to 4:30 and the drive-thru is open to 5:00, must mortgage payments be processed after 5:00?

A: Regulation Z provides that a full payment must be credited to the account as of the date of receipt; however, it can be credited later as long as the delay does not result in any charge or negative credit reporting. 1026.36(c)(i)(1). The terms of the mortgage loan may affect this. For additional guidance, refer to section 1026.36(c)(1)(i)-2 of the Official Interpretation of Regulation Z.

Q27: If the mortgage payment is late and a late fee is assessed, do we still need to apply the normal payment if the customer did not send the late fee and collect that amount later or at payoff?

A: Generally, yes. See 1026.36(c)(1)(i).

Q28: Are we required to hold a partial payment in a suspense account or can we deny the payment when it is not sufficient to pay the total amount due?

A: At the discretion of the servicer, a partial payment can be retained and credited to the borrower, returned to the borrower or held in a suspense account. 1026.36(c)(1)(ii) and (iii).

Q29: If a borrower wishes to buy-up the interest rate to cover loan level pricing adjustments and that buy-up exceeds the APOR + 1.5% is that still considered an HPML?

A: Yes. There is no exception in the regulation for this activity.

Q30: In regards to periodic mortgage statements (1026.41), can we choose a statement cycle date that is earlier than the one used in the model notice?

A: Yes. The rules for billing cycles are contained in 1026.2(a)(4) of the Official Interpretations.

Regulation X – Mortgage Servicing Rules

Q1: What is the 120 day rule concerning initiating foreclosure for small lenders?

A: A small servicer cannot refer a borrower to foreclosure or initiate foreclosure proceedings until the borrower's mortgage loan is more than 120 days delinquent. 1024.41(f)(i), 1024.41(j).

Q2: Are the force-placed insurance limits for escrowed loans only or for all mortgage loans?

A: The force-placed insurance rules which apply to most federally-related mortgage loans for which the borrower is required to provide hazard insurance are at 1024.37. Additional provisions that apply to loans with escrows are at 1024.17(k)(5).

Regulation B – Appraisals

Q1: Is there a small creditor exemption to the higher-priced mortgage appraisal rule?

A: No. There is no small creditor exemption to the higher-priced mortgage appraisal requirements of Regulation Z. 1026.35(c)(2). A small creditor must also provide notice it conducted an appraisal or valuation and deliver a copy to the applicant under Regulation B. 1002.14.

Q2: Are the appraisal disclosures required for home equity loans that are open-end lines of credit?

A: Yes. Regulation B requires a creditor to provide an applicant with a notice of the right to receive a copy of all written appraisals developed in connection with an application for closed-end or open-end credit secured by a first lien on a dwelling, and to provide a copy of each such appraisal or other written valuation. 1002.14.

Regulation E – Remittance Transfers

Q1: When calculating whether a credit union meets the threshold for coverage by the remittance rules (100 or fewer remittances per year), does the credit union count only international transfers?

A: The term “remittance transfer” refers only to electronic transfers of funds from a person in a state to a recipient located in a foreign country. 1005.30(e). Accordingly, an institution would count international, but not domestic, wires. But international wires may be only one type of remittances transfers sent by a particular institution. Other types of remittance transfers include international ACH transfers and certain types of international bill-pay. For additional guidance, see page 16 of CFPB’s “International Fund Transfers, Small Entity Compliance Guide, Ver. 2.0,” available here: http://files.consumerfinance.gov/f/201308_cfpb_Intl-Money-Transfer-Small-Entity-Compliance-Guide.pdf.

Q2: My member lives in Switzerland, but the credit union is in Minnesota. Would this person be a sender because the credit union is located in MN?

A: When a transfer is made from an account, and the sender’s account is located in a state, the sender is assumed to be in that state regardless of where she is physically located. *See* comment 30(g)-1 of Official Interpretation to Regulation E. However, when a transfer is not made from an account (such as when a sender pays for a remittance transfer in person with cash), whether the sender is located in a state is determined by the sender’s physical presence. For additional guidance, see page 12 of CFPB’s “International Fund Transfers, Small Entity Compliance Guide, Ver. 2.0,” available here: http://files.consumerfinance.gov/f/201308_cfpb_Intl-Money-Transfer-Small-Entity-Compliance-Guide.pdf.

Q3: Are sole proprietors and individuals “doing business as” considered businesses or consumers for remittance purposes?

A: Businesses, including sole proprietors and “d/b/a s,” are not consumers under Regulation E. For additional guidance, see page 12 of CFPB’s “International Fund Transfers, Small Entity Compliance Guide, Ver. 2.0,” available here: http://files.consumerfinance.gov/f/201308_cfpb_Intl-Money-Transfer-Small-Entity-Compliance-Guide.pdf.

Q4: Since we are exempt from the Remittance Transfer Rule due to processing 100 or fewer remittances in a year, is it true that we would not need to allow the sender to cancel their remittance transfer within 30 minutes of payment?

A: Generally, if you consistently (from year to year) provide to consumers 100 or fewer remittance transfers, then you are deemed not to be a remittance transfer provider pursuant to the Remittance Transfer Rule and thus do not have to comply with the regulation, including its cancellation requirements. 1005.30(f) and 1005.34(a).

Q5: Regarding the Remittance Transfer Rule, if we are currently in the safe harbor, do an unusual number of international transactions next year and start compliance with disclosures, BUT in the following year fall well below the 100 minimum, can we STOP complying with the regulation? Exceeding 100 remittance transfers is unusual for our institution. We average 50-75 transactions per year, but have exceeded 100 one year.

A: You cannot stop complying immediately. Assuming that you provided the 101st transfer in the normal course of your business based on a facts and circumstances test, you are a remittance transfer for that 101st transfer as well as any additional remittance transfers provided in that year and the subsequent year. In the subsequent year, if you do not exceed 100 transfers, you would not be a remittance transfer provider in the following year. Refer to comment 30(f)(2)-i of CFPB Official Interpretation of Regulation E for illustrations of the application of the facts and circumstances test. For additional clarification, refer to comments 30(f)(2)-iii, and -iv of CFPB Official Interpretation of Regulation E.

Q6: If you are not an ACH originator, do your foreign transactions count towards the Remittance Transfer Rule?

A: First, determine if the transfers fall within the definition of “remittance transfer.” A “remittance transfer” means the electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider. The term applies regardless of whether the sender holds an account with the remittance transfer provider, and regardless of whether the transaction is also an electronic fund transfer, as defined in 1005.3(b). See 1005.30(e). Then, determine if you are the remittance transfer provider. You are the provider if you directly engage with the consumer to send the transfer. See Q10 for additional guidance on what it means to be “directly engaged” with respect to ACH debits. If you answered yes to both, then these transactions count for purposes of determining whether you qualify for the safe harbor.

Q7: Would you count MoneyGram and Western Union transactions as remittance transfers?

A: Depending on how the transaction is structured, it may count as a remittance transfer for the credit union or the money transmitter (such as MoneyGram or Western Union) but typically not both. For example, the money transmitter can itself provide transactions that meet the definition of “remittance transfer.” If the money transmitter is processing remittance transfers on behalf of a credit union as a service provider to the credit union, and the credit union is directly engaged with the member, those transfers are counted as remittance transfers the credit union provides to its members. See Q10 for additional guidance on what it means to be “directly engaged.” But if the credit union is providing the transfers to its members on behalf of a money transmitter as an agent or through a similar type of business relationship, then the money transmitter is the remittance transfer provider. The credit union would not count transactions in which the credit union is acting as an agent for purposes of determining whether it qualifies for

the safe harbor. Refer to comment 30(f)-1 of CFPB Official Interpretation of Regulation E. Whether an agency or similar relationship exists depends on applicable law, such as state law. 1005.30(a).

Q8: Some of our members requesting wires via Internet Home Banking are complaining that we have to read the combined disclosure to them over the phone, as this is an inconvenience due to the amount of time it takes.

A: Disclosures can be provided by the same method as the remittance transfer request. The disclosures do not have to be made orally if the request was submitted online. 1005.31(a)(2), (3). Note, however, that the regulation contains timing requirements related to when disclosures must be provided to a consumer. 1005.31(e), 1005.36(a). You are prohibited by the regulation from providing oral disclosures in response to online-only transfer requests, and to requests made partially by telephone and partially by other methods. Official Interpretation 1005.31(a)(3)-1.

Q9: Can a member elect to not get the disclosures required by the Remittance Transfer Rule?

A: No. The regulation requires the remittance transfer provider to make the disclosures. It contains no provision for waiver. 1005.31(b).

Q10: If a member has an ACH debit from his account going to a foreign country, would the institution originating the debit be required to provide the disclosures? We do not “originate” ACH.

A: The “remittance transfer provider,” as defined in 1005.30(f), must provide the disclosures. 1005.31(b). The remittance transfer provider is the entity that is directly engaged with the member. See illustrations below:

- A member of a credit union comes into the credit union and requests an international wire transfer. The credit union uses a third-party service provider, such as Western Union, to process and execute international wire transfer orders. Is the credit union acting as the provider of the international wire transfer?
 - Answer: Yes. The credit union is the provider because it is the entity that is directly engaged with the sender to send the international wire transfer.
- A consumer provides the consumer’s checking account information at the consumer’s credit union directly to a third party payment service to pay a foreign merchant. The third party payment service debits the consumer’s checking account using an ACH (IAT) debit. The credit union receives the instructions from the third party payment service, debits the consumers account, and provides payment through the third party payment service. Is the credit union acting as the provider?
 - No. The third party payment service is directly engaged with the consumer to send the payment to the foreign merchant.

See Official Interpretations 1005.30(e)-2 and 1005.30(f).

Miscellaneous

Q1: Do I go to the NCUA website to get the small entity compliance guides?

A: Links to the relevant CFPB Guides, including the small entity compliance guides, are found at the Consumer Compliance Regulatory Resources page of NCUA’s website, at

<http://www.ncua.gov/Resources/CUs/Pages/ConsumerCompliance/default.aspx>. Others can be located on CFPB website, at www.consumerfinance.gov.

Q2: Is there any guidance in place that further defines what a “residence” consists of for travel trailers and boats?

A: TILA and Regulation Z do not define “residence.” The term “dwelling” means a residential structure or mobile home. TILA, 1602(w). Depending on the specific facts, a residence can be a dwelling, travel trailer, boat or other similar personalty. Official Interpretation 1026.2(a)(19)-2.

Q3: We offer financing for 4 or more units thru our Commercial Lending programs. Do any of the Dodd-Frank rules apply to “business loans?”

A: The rules do not apply to business loans; however, financing secured by a building with four or less residential units may be covered if one of the units is the borrower’s principal dwelling. 15 U.S.C. 1602(w) and 1026.2(a)(19). In addition, the appraisal requirements of Regulation B apply to business loans. For example, a loan to start a business is covered so long as the application for credit will be secured by a first lien on a dwelling. A “dwelling” is a residential structure that contains one to four units whether or not that structure is attached to real property. 1002.14(b)(2). A one to four unit property may have a mixed use. For example, if some units are commercial while others are residential, the property is a dwelling because of the presence of residential units.

Q4: An MBA study has shown that following the Safe Harbor guidelines will cause disparate impact to minorities. If a CU follows the QM Safe Harbor guidelines will it get Safe Harbor from Fair Lending disparate impacts?

A: See “Interagency Statement on Fair Lending Compliance and the Ability-to-Repay and Qualified Mortgage Standards Rule,” linked to NCUA Regulatory Alert 14-RA-01, available on www.ncua.gov.

Q5: Can you please define the “APOR?” Is it tied to the prime rate? Is it published somewhere? Where can I check to find out what it is from time to time?

A: Average prime offer rate (“APOR”) means the annual percentage rate that is derived from weekly average interest rates, points, and other loan pricing terms currently offered to consumers by a representative sample of creditors for mortgage transactions that have low-risk pricing characteristics. 1026.35(a)(2). APOR rates and a calculator are found on the FFIEC website at <http://www.ffiec.gov/ratespread/aportables.htm>.